

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BENJAMIN J. GONZALEZ,

Plaintiff,

vs.

No. CIV 16-0909 JB/LAM

STATE OF NEW MEXICO; GREY
SHULLER; PATRICK MELVIN;
ALEXANDER CHING; MARY CRAIG; ELI
MONTES; RICHARD VAN DYK; ALLEN
SANCHEZ and ERNIE MENDOZA

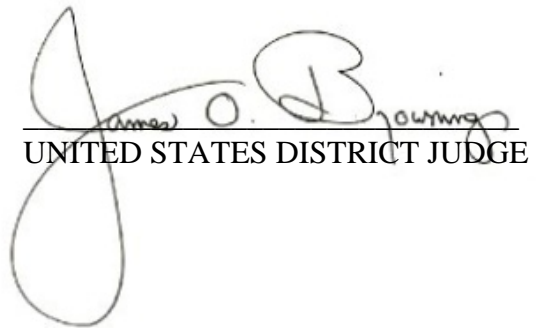
Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL WITHOUT PREJUDICE

THIS MATTER comes before the Court: (i) on the Court’s Order to Cure Deficiency, filed August 23, 2016 (Doc. 3)(“Deficiency Order”); and (ii) on the Court’s Order to Show Cause, filed October 11, 2016 (Doc. 4)(“Show Cause Order”). In the Show Cause Order, the Court ordered Plaintiff Benjamin J. Gonzalez to comply with the Court’s Deficiency Order. In the Show Cause Order, the Court warned Gonzalez that if he “fails to cure the designated deficiencies within thirty (30) days from the date of this order, this action may be dismissed without prejudice.” Show Cause Order at 2. As of this date, Gonzalez has not complied with the Court’s August 23 2016 Deficiency Order, shown cause why the Court should not dismiss this action, or otherwise responded to the Court’s order. Rule 41(b) of the Federal Rules of Civil Procedure authorizes a district court to dismiss an action *sua sponte* “[i]f the plaintiff fails to prosecute or comply with these rules or a court order.” Fed. R. Civ. P. 41(b). See Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)(noting that Fed. R. Civ. P. 41(b) “has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff’s failure to

prosecute or comply with the rules of civil procedure or court's orders"). Because Gonzalez has failed to comply with the Court's August 23, 2016 Deficiency Order and October 11, 2016 Show Cause Order, the Court will dismiss his 1983 Prisoner Civil Rights Complaint, filed August 5, 2016 (Doc. 1), without prejudice pursuant to rule 41(b).

IT IS ORDERED that the Plaintiff's 1983 Prisoner Civil Rights Complaint, filed August 5, 2016 (Doc. 1) is dismissed without prejudice and judgment will be entered.



UNITED STATES DISTRICT JUDGE

Parties:

Benjamin J. Gonzalez
3201 Highway 314 SW
Los Lunas, New Mexico

Plaintiff pro se

State of New Mexico, Eddy County's Judicial Body
Carlsbad, New Mexico

-- and --

Grey Shuller
Judge
Richard Van Dyk
Magistrate Judge
Patrick Melvin
District Attorney
Eli Montes
Court Clerk
New Mexico Fifth Judicial District
Carlsbad, New Mexico

-- and --

Alexander Ching
Public Defender
New Mexico Public Defender's Office
Hobbs, New Mexico

-- and --

Mary Craig
Public Defender
New Mexico Public Defender's Office
Carlsbad, New Mexico

-- and --

Allen Sanchez
Detective
Ernie Mendoza
Sherriff
Carlsbad Police Department
Carlsbad, New Mexico

Defendants pro se